

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CR2014-002527-003 DT

06/24/2016

HONORABLE DANIELLE J. VIOLA

CLERK OF THE COURT  
D. McGraw  
Deputy

STATE OF ARIZONA

VANESSA MARIE LOSICCO

v.

STEPHEN PAUL LACY (003)

JON MARTINEZ

**UNDER ADVISEMENT RULING**

**Admissibility of Co-Conspirator Statements**

The Court has considered the State's Trial Memorandum Re: Admission of Co-Conspirator Statements Pursuant to Rule 801(D)(2), Defendant Stephen Lacy's Trial Memorandum Re: Admission of Co-Defendant's Statements, and Defendant Adam Barfield's Joinder in Defendant (Stephen Lacy's) Trial Memorandum Re: Admission of Co-Defendant's Statements and Memorandum of Supplemental Authority. The Court further held oral argument on June 13, 2016, and has considered the arguments of counsel and the objections noted in the AZDOC Calls Redaction Chart.<sup>1</sup> The State seeks to introduce statements contained in recorded telephone calls between Defendant Adam Barfield and the Defendants, as well as statements from calls between non-indicted third parties and Adam Barfield. Based on the memoranda submitted, the Court concludes that a pre-trial ruling under Rules 103, 104 and 611 of the Arizona Rules of Evidence is appropriate to avoid undue delay during trial. The Court held a pre-trial hearing on May 17, 2016, during which the State proffered evidence of a conspiracy related to money laundering. The Court found the State's proffer supported a *prima facie* finding of a conspiracy involving the Defendants. The Court then directed the State to identify the specific statements it intended to elicit on the basis of Rule 801(d)(2)(E) and the Court asked Defendants to further identify any objections. The Court has now considered the proffered statements and the objections to same.

---

<sup>1</sup> A copy of the chart will be filed for appellate purposes.  
Docket Code 926

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CR2014-002527-003 DT

06/24/2016

This ruling is not intended to limit the State's ability to offer a Defendant's own statement as against only that Defendant. This ruling is intended to address the extent to which any statements from the prison calls may be offered as against all of the Defendants under Rule 801(d)(2)(E).

**Co-Conspirator Statements**

To admit the statements of a co-conspirator, the Court must find: 1) by a preponderance of the evidence that the conspiracy existed and the Defendant and the declarant were parties to it; 2) the declarant made the statement during the course of the conspiracy; and 3) the co-conspirator made the statement in furtherance of the conspiracy. *See State v. Dunlap*, 187 Ariz. 441, 458, 930 P.2d 510, 535 (Ct. App. 1996); *see also Bourjaily v. United States*, 483 U.S. 171, 176 (1987). As discussed above, the Court finds the State has made a *prima facie* case for the existence of a conspiracy that involved the Defendants. The statements at issue were made between November 28, 2009 and April 14, 2014. Based on the *prima facie* showing, the Court finds the statements at issue to have been made by Defendants (co-conspirators) during the course of the conspiracy. The State has proffered evidence that the conspiracy was ongoing during the period of time that Defendant Barfield was incarcerated and as early as the first phone call at issue. Based on the above, the Court has limited its consideration to the issue of whether the proffered statements identified by the State were made in furtherance of the conspiracy.

When inquiring whether a statement of a co-conspirator was made in furtherance of the conspiracy, courts focus on the intent of the co-conspirator in advancing the goals of the conspiracy, not on whether the statement has the actual effect of advancing those goals. *See Dunlap*, 187 Ariz. at 458, 930 P.2d at 35. Here, the calls largely reflect discussions of Club Lace business, including discussions of other related clubs and legal issues. The calls related to the business of the Club reflect the parties' interest in increasing business or rebuilding business which is related to whether funds are available for Adam Barfield. To the extent that the calls include an exchange of information about Club Lace, including past or present practices, the related statements are in furtherance of the conspiracy to the extent that the participants are sharing information which may or may not affect Club Lace business or the proceeds received by Adam Barfield. The calls further reflect discussions related to Adam Barfield requesting or receiving money directly or indirectly from Club Lace or the individuals running Club Lace. The calls that address other clubs, including investigations or criminal proceedings involving unrelated parties may further advance the alleged conspiracy to the extent the co-conspirators compared or evaluated business practices to avoid any similar issues which would interfere with the Club Lace business. A number of the statements address steps taken to obtain approval for Adam Barfield to speak with Stephen Lacy or to obtain a number that can be used for ongoing communications. Discussions about securing a means of communication necessarily furthered

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CR2014-002527-003 DT

06/24/2016

the goals of the conspiracy to the extent that the co-conspirators would otherwise be restricted from communicating with Adam Barfield in a timely manner.

Upon review, and except as set forth below, the Court concludes that the statements set forth in the chart submitted by the State are statements made in furtherance of the conspiracy such that they may be offered as against the Defendants pursuant to Rule 801(d)(2)(E).<sup>2</sup>

**Rule 403**

In reviewing the transcripts of the phone calls, the Court notes that each call contains a statement that indicates the call is from an inmate at the Arizona State Prison Complex and that the call is subject to recording and monitoring. The State proposes that the initial portion of every call be presented to the jury. The Court finds that the potential for undue prejudice substantially outweighs any probative value of the introductory statement and exposing the jury to such a statement at the beginning of each statement/call would be cumulative.

**IT IS ORDERED** the State may elicit appropriate testimony to lay the foundation for the introduction of the statements contained in the prison calls but whether in the form of a recording or transcript, the prison calls shall be redacted to eliminate that portion of the recording or transcript that references the call is from an inmate at the Arizona State Prison Complex.

Additionally, some of the statements at issue make reference to Stephen Lacy being in jail. The Court finds that any probative value to Defendant Lacy begin in jail is substantially outweighed by the danger of unfair prejudice. All references to Stephen Lacy being in jail shall be redacted before any portions of the calls/statements are presented to the jury.<sup>3</sup>

As to the Defendants' objections that certain statements are prejudicial, confusing, or misleading, the Court finds the probative value of such statements substantially outweighs the danger of any unfair prejudice or potential to mislead or confuse the jury.

---

<sup>2</sup> The Court has made a preliminary ruling only, subject to further review following the admission of evidence at trial.

<sup>3</sup> The Court finds the fact of Stephen Lacy's incarceration to be distinguishable from the fact of Adam Barfield's incarceration. First, Stephen Lacy's period of incarceration was limited in duration and did not give rise to recorded calls with co-Defendants spanning more than five years. Additionally, Stephen Lacy's jail accounts are not part of the evidence offered to prove the elements of the crimes charged.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CR2014-002527-003 DT

06/24/2016

**Statements Not Made In Furtherance of a Conspiracy**

The Court finds the State has not established that the following statements were made in furtherance of the conspiracy and the following statements shall not be offered against all of the Defendants pursuant to Rule 801(d)(2)(E):

Adams/25	2/14/13	Page 3, lines 93-131
Adams/25	6/15/13	Page 1, line 23-page 4, line 140
Adams/25	12/10/12	Page 3, lines 106-140; lines 145-150
Adams/26	2/6/10	Page 1, line 1-28; page 2, lines 78-page 5, 181
Adams/61	6/7/14	Entire call
Adams/61	5/23/14	Page 1, lines 1-35; page 2, lines 79- page 5, line 191; page 5, lines 218-371
Lewis/23	9/20/12	Page 1, lines 87-88-page 3, line 106  Page 4, lines 154-176; page 5, lines 177-220  Page 6, lines 221-264-page 14, line 596

Smoger/21 2/25/14 Line and page numbers are not included but the entire call shall be precluded with the exception of the first four lines of text through “put it on your books” and “So just when you give the money, just put everything on there. CB: Okay dokey. AB: You should have \$250. CB: Yeah. AB: Well minus the cd, I know you are going to use it this weekend so just put the \$250 minus the CD on the books. CB: Ok.” Additionally, the following may be offered as against all the Defendants: “AB: And then after that you are going to put money on the books. CB: Yep so Monday or Tuesday next week, if I got time, yeah if I got time at work on Monday, I will do it during work on Monday, right now I got Tuesday off. AB: Ok, the 350. CB: Minus the 50 bucks and the CD, so about 275. AB: Minus the 50? CB: Yeah oh I gotcha I gotcha. AB: Yeah don’t minus the 50 anymore, put everything on the books except for the CD. CB: Ok.”

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CR2014-002527-003 DT

06/24/2016

IT IS ORDERED except as stated above, the statements identified in the above paragraph shall not be offered as co-conspirator statements pursuant to Rule 801(d)(2)(E).

**Defendant Adam Barfield's Motion in Limine to Exclude Any  
Reference to his Incarceration – Denied**

The Court has considered Defendant Adam Barfield's Motion in Limine to Exclude Any Reference to his Incarceration filed May 29, 2016 and the State's Response. The Court further considered the arguments of counsel presented on Monday, June 13, 2016. Defendant Barfield seeks to preclude the presentation of any evidence that references his incarceration. The State asserts that the fact of Adam Barfield's incarceration cannot be precluded because such fact is inherent in the facts of the case and preclusion would cause confusion and mislead the jury.

The State has stipulated that the reason for Defendant Adam Barfield's incarceration and the length of the incarceration should not be presented to the jury. The fact that Adam Barfield was incarcerated between 2009 and 2014 is not an element of the charged offense but it is inherent to the evidence to support the charged offense of money laundering. For example, the State seeks to establish that Defendant Adam Barfield received/accepted funds onto his prison books with such alleged racketeering funds coming from Club Lace. Here, the State will elicit evidence that Mr. Barfield discussed the receipt of such funds with the co-Defendants and the prison account records corroborate deposits for the benefit of Adam Barfield. That Adam Barfield was incarcerated further explains why his calls were being recorded and gives context to the need for Adam Barfield to arrange for calls with the co-Defendants, including discussions about certain phone numbers or accounts to be used. Moreover, Mr. Barfield's incarceration is relevant to motive as well as to explain underlying facts such as to why others were operating Club Lace when his name appeared on legal documents associated with the entity. The fact of incarceration further puts the parties' relationships into context (e.g., explains why Adam Barfield is not running day to day operations at Club Lace or why others are managing Club Lace and/or directing funds from the club to Adam Barfield).

Precluding any reference to Adam Barfield's incarceration may further serve to mislead or confuse the jury. For example, the jury would not be provided any explanation as to why Adam Barfield needed Cary Barfield to transfer funds to him or why he could not arrange for those transfers on his own. Additionally, the fact that Adam Barfield was incarcerated may further support a defense that Adam Barfield was not actively participating in Club Lace operations.

The Court recognizes the fact of Adam Barfield's incarceration is very prejudicial. The Court also recognizes the extent to which the fact of incarceration is extremely probative. In

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CR2014-002527-003 DT

06/24/2016

consideration of Rule 403, the danger of unfair prejudice arising from the fact of Adam Barfield's incarceration does not substantially outweigh the probative value. The prejudice may be further avoided or reduced by addressing the fact of incarceration during *voir dire*.

The Co-Defendants did not join in Defendant Adam Barfield's motion but they did assert an objection to the extent that they would be associated with a defendant who was incarcerated and that such association could be deemed prejudicial by the jury. As addressed above, this potential prejudice can be addressed during jury selection.<sup>4</sup>

IT IS ORDERED Defendant Adam Barfield's Motion in Limine to Exclude Any Reference to His Incarceration is denied.

IT IS FURTHER ORDERED directing the Clerk of the Court to file a copy of the chart submitted by counsel titled AZ DOC Calls Pertinent Sections – Final With all Defense Objections.

FILED: AZ Doc Calls Pertinent Sections – Final With All Defense Objections Chart

---

<sup>4</sup> As to Cary Barfield, the Court notes that any prejudice is likely minimal given the family relationship between Cary and Adam Barfield.